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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,806	12/26/2001	Nigel R. Ellis	MSFT-1079/115148.2	4495

7590 05/13/2004

Woodcock Washburn LLP  
One Liberty Place - 46th Floor  
Philadelphia, PA 19103

EXAMINER
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MIZRAHI, DIANE D

ART UNIT	PAPER NUMBER
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2175

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DATE MAILED: 05/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

215

# Office Action Summary

Application No.

10/034,806

Applicant(s)

ELLIS ET AL.

Examiner

DIANE D. MIZRAHI

Art Unit

2175

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 12-26 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 10 and 13-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18 and 28 is/are allowed.
- 6) ☒ Claim(s) 10, 13-17 and 20-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

DIANE D. MIZRAHI  
PRIMARY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 2175

### III. Detailed Action

Claims 10, and 13-28 are presented for examination.

#### Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 10, and 13-17 and 20-27 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1-11 of prior U.S. Patent No. 6,360,214. This is a double patenting rejection.

#### Allowable Subject Matter

Claims 18-19 and 28 are allowed over the prior art made of record.

The following is an examiner's statement of reasons for allowance: Applicant's particular method for automatically generating statistics for data in a database which includes

Art Unit: 2175

determining if automatic creation of statistics has been authorized in the database, and if automatic creation of statistics has not been authorized in the database, forming a guess as to the statistics, including if automatic creation of statistics has been authorized in the database, determining if the data is of a type for which statistics which can be generated in the database, and if the data is of a type for which statistics can be generated in the database then generating the statistics, and if the data is of a type for which statistics can not be generated in the database, forming a guess as to the statistics in combination with the other limitations of the claims, was not disclosed by, would not have been obvious over, nor would have been fairly suggested by the prior art of record.

**Other Prior Art Made of Record**

The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diane D.

Art Unit: 2175

Mizrahi whose telephone number is (703) 305-3806. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dov Popovici can be reached on (703) 305-3830. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-9000 for regular communications and (703) 305-9000 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9001.



Diane Mizrahi  
Primary Patent Examiner  
Technology Center 2100

May 12, 2004